

## Securities and Exchange Commission

## § 250.52

(2) The Proposed Acquirer files with the Commission an application-declaration proposing the issuance of such certificates of deposit in exchange for tendered securities.

(3) Upon notice and after a hearing which shall be limited to the fairness of the terms and conditions of such issuance and exchange and to compliance with the conditions of this Rule, the Commission in its discretion may by order permit such issuance and exchange on such terms and conditions as it shall approve. Any person to whom it is proposed to issue a certificate of deposit shall be entitled to appear at such hearing.

(4) If the terms and conditions specified in the certificates of deposit to be issued pursuant to order of the Commission differ from those specified in the invitation for tenders previously published by the Proposed Acquirer, the Commission may in such order require the Proposed Acquirer to give notice thereof by mail (and publication if deemed appropriate) to all persons who have tendered their securities and to provide up to 20 days after mailing of such notice for any such person to elect, in a manner prescribed by the Commission, either to continue to or revoke his tender. The terms and conditions specified in the certificates of deposit may be modified only pursuant to order of the Commission.

[33 FR 9287, June 25, 1968]

### § 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the business of the public-utility subsidiary company;

(2) The issue and sale of the security have been expressly authorized by the state commission of the state in which the subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to par-

allel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and related rules with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the existing business of the subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; *Provided*, That any security issued to an associate company by any energy-related company subsidiary, as defined in §250.58, shall not be exempt under these provisions unless, after giving effect to the issue of the security, the aggregate investment by a registered holding company or its subsidiary in the energy-related company subsidiary and all other energy-related company subsidiaries does not exceed the limitation in §250.58(a)(1).

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U-6B-2 (17 CFR 259.206) containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U-6B-2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by any associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act (15 U.S.C. 79i(a)); provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving

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the issue and sale of securities to form a new subsidiary company of a registered holding company.

(e) A copy of any Certificate of Notification on Form U-6B-2 (§259.206) that is filed with this Commission under this section with respect to any security issued by a subsidiary of a registered holding company under paragraph (b) of this section and acquired by a public-utility company that is an associate company of the issuer, shall be submitted concurrently to each state commission having jurisdiction over the retail rates of the public-utility company.

[60 FR 33639, June 28, 1995, as amended at 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

### **§ 250.53 Certain registered holding company financings in connection with the acquisition of one or more exempt wholesale generators.**

(a) In determining whether to approve the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company or companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, if the following conditions are met:

(1) Aggregate investment does not exceed 50% of the system's consolidated retained earnings.

(i) *Aggregate investment* means all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company

from a system company (other than an exempt wholesale generator or a foreign utility company).

(ii) *Consolidated retained earnings* means the average of the consolidated retained earnings of the registered holding company system as reported for the four most recent quarterly periods on the holding company's Form 10-K or 10-Q (§249.308a or §249.310 of this chapter, respectively) filed under the Securities Exchange Act of 1934, as amended.

(2) The registered holding company maintains books and records to identify investments in and earnings from any exempt wholesale generator or foreign utility company in which it directly or indirectly holds an interest. In addition:

(i) For each United States exempt wholesale generator in which the registered holding company directly or indirectly holds an interest:

(A) The books and records of such entity shall be kept in conformity with United States generally accepted accounting principles ("GAAP").

(B) The financial statements shall be prepared according to GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements as the Commission may request.

(ii) For each foreign exempt wholesale generator or foreign utility company which is a majority-owned subsidiary company of the registered holding company:

(A) The books and records of such entity shall be kept in conformity with GAAP.

(B) The financial statements for such entity shall be prepared in conformity with GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements, or copies thereof, in English, as the Commission may request.

(D) For purposes of this section, a "majority-owned subsidiary company" is one in which the registered holding company directly or indirectly owns more than 50% of the voting securities.